



**The PPP Arbiter**

**Procedural Approach to Periodic Review**

**2 June 2008**

## **Role and approach of the Arbiter**

The role of PPP Arbiter was created by the Greater London Authority Act 1999 to give guidance or directions on matters relating to the London Underground PPP Agreements. Although appointed by the Secretary of State for Transport, the Arbiter is independent of Government and of the Parties to the PPP Agreements.

In giving guidance or directions, the PPP Arbiter is under a statutory duty to act in the way he considers best calculated to achieve four objectives:

- to ensure that London Underground has the opportunity to revise its requirements under the PPP Agreements if the proper price exceeds the resources available;
- to promote efficiency and economy in the provision, construction, renewal, or improvement and maintenance of the railway infrastructure;
- to ensure that if a rate of return is incorporated in a PPP Agreement, and taking into account matters specified in the Agreement, a company which is efficient and economic in its performance of the requirements in that PPP Agreement would earn that return; and
- to enable the Infracos to plan the future performance of the PPP Agreements with reasonable certainty.

The Arbiter is also under a duty to take account of any factors which are notified to him by both Parties to an Agreement, or are specified in the relevant PPP Agreement, as ones to which he must have regard.

Following consultation, the Arbiter has adopted the following aim for his work, and that of his Office:

*The aim of the PPP Arbiter and his Office is to give sound and timely guidance and directions on relevant aspects of the PPP Agreements when this is requested, and to work constructively with the Parties to the PPP Agreements in support of their key objective of providing to the public a modern and reliable metro service in a safe, efficient and economic manner.*

*We seek to achieve this by:*

- *working within a clear, transparent and consistent framework;*
- *giving reasoned guidance and directions which are based on well developed analysis shared with the Parties and procedures which achieve predictability in process and outcome;*
- *establishing effective dialogue with the PPP Parties and other stakeholders to facilitate timely response to requests for guidance or direction, while maintaining our independence; and*
- *operating to high standards of accountability in all our actions.*

Further information on the functions, duties and approach of the Arbiter can be found on the Arbiter's website <http://www.ppparbiter.org.uk>

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## 1 Introduction

- 1.1 The Arbiter has produced a Framework<sup>1</sup> for use in the giving of directions and guidance to the PPP Parties. This Procedural Approach document should be read in conjunction with that Framework to which it cross refers.
- 1.2 This document sets out the procedures which the Arbiter is minded to follow in the circumstances of a request or requests for Guidance or Direction in respect of Periodic Review.
- 1.3 The definitions and expressions used in this Procedural Approach document are taken from the Framework and/or the Master Definitions Agreement dated 31 December 2002 and made between (1) London Underground Limited (2) Infraco BCV Limited (3) Infraco Sub-Surface Limited and (4) Infraco JNP Limited.
- 1.4 This document should be read alongside the Arbiter's Analytical Approach to Periodic Review which is published separately<sup>2</sup>. That document describes how information provided to the Arbiter as part of a reference would be analysed and how existing data held by the Arbiter would be used.
- 1.5 This document has been prepared following consultation with the PPP Parties over a period since February 2007. It will be reviewed following completion of the reference for guidance received from London Underground on 14 April 2008<sup>3</sup>.

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<sup>1</sup> Arbiter's Procedural Framework for Use in the Giving of Directions and Guidance under the Greater London Authority Act 1999 and PPP Agreements, 4 June 2007 at [http://www.ppparbiter.org.uk/files/uploads/g\\_proceduralFrameWork/2007651842\\_Procedural%20Framework,%20June%202007.PDF](http://www.ppparbiter.org.uk/files/uploads/g_proceduralFrameWork/2007651842_Procedural%20Framework,%20June%202007.PDF).

<sup>2</sup> Arbiter's Analytical Approach to Periodic Review, 2 June 2008 at <http://www.ppparbiter.org.uk>.

<sup>3</sup> Arbiter confirms receipt of reference from London Underground on future costs for Tube Lines, Press Notice 01/08, 15 April 2008 at [http://www.ppparbiter.org.uk/files/uploads/i\\_pressNotices/20084151331\\_Press\\_Note\\_01\\_08%20and%20reference%20application%20notice.pdf](http://www.ppparbiter.org.uk/files/uploads/i_pressNotices/20084151331_Press_Note_01_08%20and%20reference%20application%20notice.pdf).

## **2 Background**

- 2.1 This document is based on the contractual provisions in respect of Periodic Review in Tube Lines' PPP Agreement, as it is the Arbiter's expectation that both Metronet Infracos will have other arrangements for Periodic Review. However the principles set out could equally apply to any Infraco.
- 2.2 Para 1.1 of Schedule 1.9 of the PPP Agreement sets out the full list of topics agreed by the PPP Parties for possible direction or guidance from the Arbiter at Periodic Review or otherwise under s229 or s230 respectively of the GLA Act.
- 2.3 Notwithstanding the agreed jurisdiction set out in para 1.1, s230 of the GLA Act does not seek to restrict the list of items on which guidance may be sought.
- 2.4 The topics on which directions may be sought is restricted by contract and statute to the following:
- Para 1.2 – Form and Structure
  - Para 1.3 – Base finance, risk and eligible finance
  - Para 1.3A – Eligible and Base Equity Options
  - Para 1.4 – Financing Impossibility
  - Para 1.4A – Required Finance
  - Para 1.5 – ISC Requirements
  - Para 1.6 – Equity Rate of Return
  - Para 1.7 – Prior Net Adverse Effect
  - Para 1.8 – Interim ISC
- 2.5 The Arbiter's expectation of those topics that are most likely to be the cause of a reference for directions fall into the following categories:
- Form and Structure (para 1.2);
  - Change in Risk (para 1.3);
  - Costs (para 1.5);
  - Financing (para 1.4A); and
  - Interim Infrastructure Service Charge (ISC) (para 1.8).

Relevant extracts from the PPP Agreement for Tube Lines are at Annex 1 to this document.

- 2.6 Under s231 of GLA Act the PPP Arbiter is under a statutory duty to 'act in the way he considers best calculated to achieve' four objectives:
- to ensure that London Underground has the opportunity to revise its requirements under the PPP Agreements if the proper price exceeds the resources available;

- to promote efficiency and economy in the provision, construction, renewal, or improvement and maintenance of the railway infrastructure;
  - to ensure that if a rate of return is incorporated in a PPP Agreement, a company which is efficient and economic in its performance of the requirements in that PPP Agreement would earn that return; and
  - to enable the Infracos to plan the future performance of the PPP Agreements with reasonable certainty.
- 2.7 All of these duties may be relevant at Periodic Review, hence the Arbiter considers it very important that a clear Procedural and Analytical Approach is understood by the PPP Parties in respect of each of these types of reference.
- 2.8 The Arbiter considers that it is in all Parties' and Stakeholders' interests for the Periodic Review to be satisfactorily concluded by the Review Date as the implications for a Periodic Review extending beyond the Review Date are likely to disrupt the efficient and economic operation and maintenance of the Underground Network, as well as delaying the implementation of changes to the required outputs.

### 3 Timetabling issues

3.1 The contractual timetable for Tube Lines is set out in its PPP Agreement and is summarised below:

Reference point	Actual date	Activity
18 months before the Review Date	31 Dec 2008	London Underground to set out Restated Terms and its Affordability Constraints (including the profile for payments for the ISC)
12 months before the Review Date	30 Jun 2009	Tube Lines to respond on: <ul style="list-style-type: none"><li>• whether a Notional Infraco would be incapable of financing the Restated Terms;</li><li>• whether the Restated Terms are outside of the limitations set out in para 2.2 of Schedule 1.9;</li><li>• whether a Notional Infraco would require Base Finance (new money for old obligations);</li><li>• whether the new or varied obligations in the Restated Terms involve an increase in risk for Infraco and/or the need for Eligible Debt and/or Eligible Equity for a Notional Infraco (new money for new obligations); and</li><li>• the ISC required</li></ul>
First Review Date	30 Jun 2010 <sup>4</sup>	Periodic Review to be completed

3.2 In the event that the Review is not complete by 30 June 2010, the PPP Agreement states<sup>5</sup> that the contract shall (apart from any direction about interim ISC pursuant to para 1.8) continue in accordance with its existing terms until the latest of:

- the Review Date;
- the start of the first Payment Period in respect of which the level of ISC as agreed between the parties or directed by the Statutory Arbiter is payable; or
- the procurement of the Required Finance.

3.3 In such circumstances the Arbiter may be asked to give directions on an Interim ISC sufficient to enable a Notional Infraco to perform its existing obligations. He would expect to receive representations at the time on

<sup>4</sup> Being the date which is "7½ years following the Transfer Date" which was 31 December 2002.

<sup>5</sup> See para 5.6 of Schedule 1.9.

the factors he should take in to account (including a Notional Infraco's financing requirements) in making such a direction.

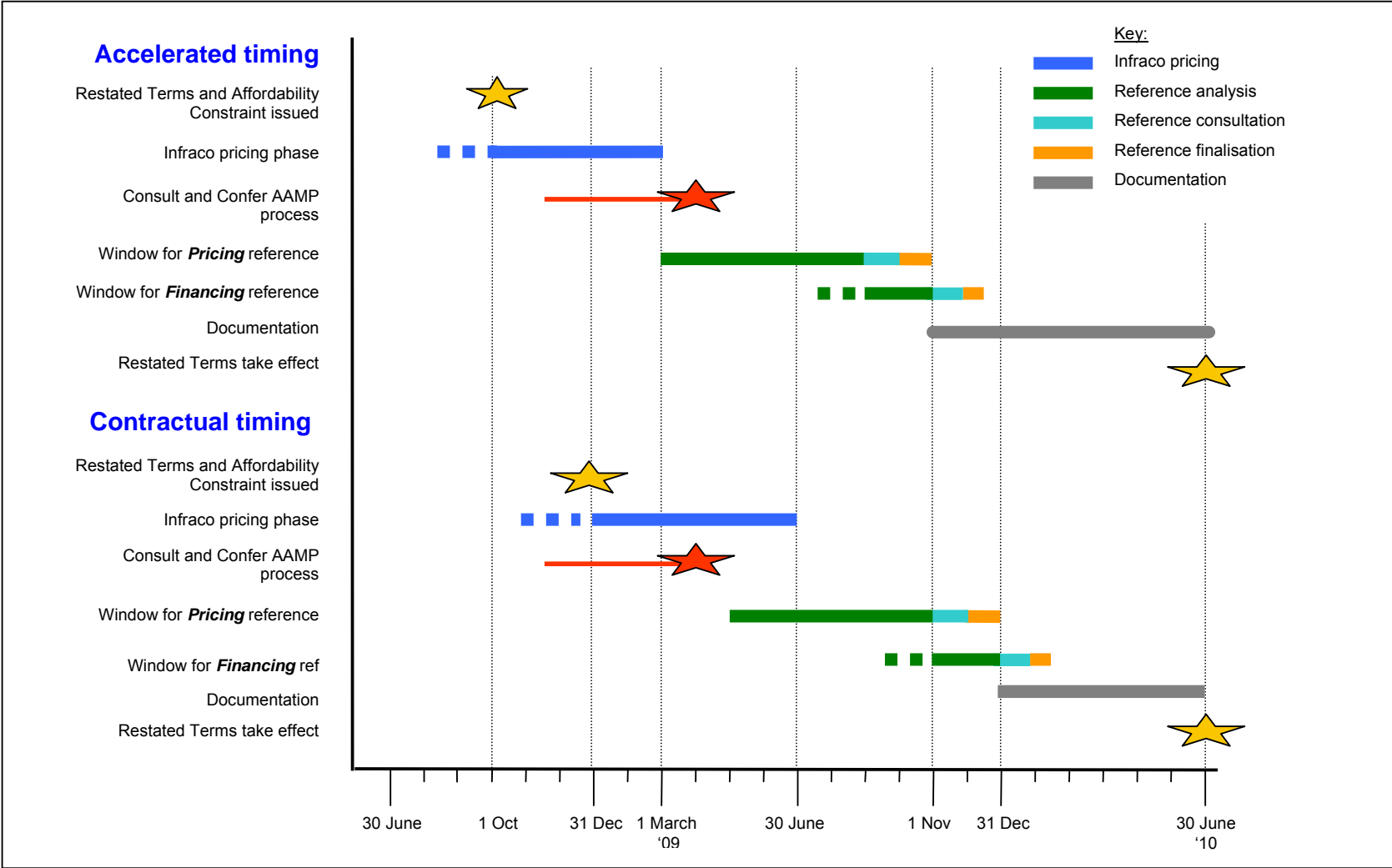
- 3.4 Recognising the consequences of missing the target date of 30 June 2010 and the challenge of reaching decisions within the contractual timescales, all Parties have been working towards an accelerated timetable with London Underground providing Restated Terms before the contractual date of 30 December 2008. Current indications are that the earliest that Restated Terms will be provided is October 2008.
- 3.5 When considering any timetable that might apply in a Periodic Review related reference, the Arbiter has considered the likely duration for the types of reference described in paragraph 2.5 above, split between three phases of work:
- analysis: the time period for the Arbiter, his Office and Advisers to consider the Detailed Submissions from each Reference Party and to develop draft guidance or directions;
  - consultation: the time period between the issue of draft guidance or direction to the Reference Parties (and other relevant Stakeholders as appropriate) and the date for representations on those drafts; and
  - final decision: the time period for the Arbiter, his Office and Advisers to consider representations received and to prepare final guidance or directions as appropriate.

Nature of reference	Anticipated Reference duration (months)			
	Analysis	Consultation	Final decision	Total
Form and Structure	≤ 1	≤ 1	½	2
Change in Risk	2	1	½	3½
Costs	4 - 6	1	1	6 - 8
Financing	2	1	½	3½
Interim ISC	≤ 1	¼	¼	1½

- 3.6 The indicative times set out in the table in paragraph 3.5 above start from the receipt of Detailed Submissions, and assume no prior involvement of the Arbiter in reviewing submissions.
- 3.7 When considering the overall timetable for Periodic Review described further below, the Arbiter has made the following assumptions about the minimum and most plausible elapsed times for preparation of those Detailed Submissions:

Preparation time for Detailed Submissions (months)	Minimum Preparation Time		Plausible or Contractual Preparation Time	
	London Underground	Tube Lines	London Underground	Tube Lines
Form and Structure	de minimis	de minimis	½	½
Change in Risk	1	2	2	2
Costs (from the point that Restated Terms are made available)	n/a	4-6	n/a	6
Financing	1	1	2	2
Interim ISC	de minimis	de minimis	½	½

- 3.8 The Arbiter has made an assumption that Tube Lines could require some element of new financing for the second Review Period and that the period of time needed following agreement between the Parties or following a direction on the relevant costs and resultant ISC for the next Review Period to allow for documentation and closure of any required finance (including standby and other working capital facilities) will be at least six months and more plausibly eight to nine months.
- 3.9 Bringing this together, the Arbiter has prepared two scenarios for the period to 30 June 2010:
- accelerated timing assuming that London Underground's Restated Terms and Affordability Constraint are produced in autumn 2008 (ie up to three months earlier than envisaged in the PPP Agreement); and
  - contractual timings as set out in the PPP Agreement (and summarised in paragraph 3.1 above).
- 3.10 The diagram below represents these two options.
- 3.11 It is clear that, even on the accelerated timetable, there is insufficient time to complete references for direction in the time available, unless the timescale for completing documentation of financing is considerably shortened or removed. The Arbiter understands that while this may be possible, this cannot at present be taken as a reasonable assumption for planning purposes.
- 3.12 As a consequence, and to reduce the timescales for a reference set out in paragraph 3.5, the Arbiter intends to 'shadow' the contractual negotiations between London Underground and Tube Lines. The basis of this is described further in Section 5.



## 4 Procedures

- 4.1 The Arbitrator's Procedural Framework envisages that his formal procedures commence when a reference is being actively considered by one or both of the Parties to a PPP Agreement. In the case of Periodic Review, he considers that he should prepare for a reference whether or not one is in prospect, given the timetable constraints considered in the previous section and the need to give timely and robust directions if a reference is in the event made.
- 4.2 The Arbitrator will therefore, in respect of Periodic Review, add another stage to his procedures, to enable him to 'shadow' the contractual negotiations between London Underground and the Infracore which will precede, and may avoid, a reference to him for directions. The Infracore's Response to Restated Terms will provide the information base for this shadowing. The format for this Response is being established in discussion between Tube Lines, London Underground and the Arbitrator, in the light of the review of the most recent Annual Asset Management Plans by the Reporters appointed by the Arbitrator. Information requirements are discussed further in Section 6.
- 4.3 Consistent with other Procedural Approaches, the approach which the Arbitrator is minded to follow in any Periodic Review specific reference is as follows:
- (i) **Prior warning:** the Arbitrator would consider it helpful if a PPP Party or PPP Parties gave advance warning if it or they intended to seek guidance or direction in respect of Periodic Review.
  - (ii) **Reference:** any Reference should be in the form prescribed in the Framework (see Article 4 and the Reference Template set out in Appendix One to the Framework).
  - (iii) **Responding Party:** where there is a Responding Party (see Article 2) a Response to Reference should be in the form prescribed in the Framework (see Article 5 and the Response to Reference Template set out in Appendix Two to the Framework).
  - (iv) **Minimum Submission Requirements:** see Section 6.
  - (v) **Post-reference meeting, Timetable and initial indication of form of direction or guidance:** having received the Reference and Initial Submission, the Arbitrator will usually convene a post-reference meeting (see Article 3) at which he would confirm (or as soon as possible thereafter) the manner he proposes to use the Framework. At or soon after that post-reference meeting the Arbitrator will set the Timetable (see Article 6). At this stage he may also set out his requirements for any Detailed Submissions.
  - (vi) **Draft guidance or directions:** the Arbitrator's intention is to provide, once his analysis is complete, draft guidance or directions to the Reference Parties who are to be provided the opportunity to comment on the draft before the guidance or directions are finalised (see Article 10).

(vii) **Guidance or directions:** the Arbitrator's intention is that the guidance (to the extent that he considers it appropriate to provide the guidance envisaged) or directions and his reasons will be published (see Article 11). Any technical report will generally be provided only to the Reference Parties.

4.4 As set out in Article 12 of the Procedural Framework, the Arbitrator may seek the views of the Reference Parties (and, if appropriate, Third Parties) on the Reference Proceedings in order to learn from a Reference once it is completed, so that the Framework and this Approach document may be improved.

## **5 Preliminary Analysis ('Shadowing')**

- 5.1 The tightness of the timetable described in Section 3 above has resulted in the Arbiter considering the level of preliminary analysis (or shadowing) he will have to undertake of the Periodic Review process in order to be able to respond to any references expeditiously. In practice some shadowing is already underway through the benchmarking work the Arbiter is involved in and other workstreams including the work of the Reporters which may include the Reporters reviewing the development of Periodic Review submissions during their production by the Reference Parties in order to provide the Arbiter with the necessary assurance.
- 5.2 The Arbiter considers that section 232(2) of the GLA Act<sup>6</sup> gives him powers to get himself ready to give directions or guidance should he be asked, even where a Party has not discussed with him the possibility of a reference.
- 5.3 Shadowing can therefore range from a light touch through to significant Arbiter involvement even in the absence of a reference and is likely to become more intensive as a Periodic Review progresses, unless it is clear that there is no prospect of a reference being made.

### **Nature of shadowing process**

- 5.4 The Arbiter envisages that shadowing may involve:
- requesting and gathering background information which would assist in the event that a reference was made to him;
  - putting questions to the PPP Parties in relation to the background information to the extent that it is necessary for the Arbiter to understand the background information;
  - collating all information in any manner he sees fit;
  - consulting third party experts;
  - consulting the PPP Parties on the questions to be posed to such experts;
  - asking the PPP Parties to submit views in writing on particular issues;
  - forming (but not expressing) preliminary views; and
  - consulting more widely, as envisaged by the GLA Act, as the Arbiter considers appropriate.
- 5.5 The Arbiter may also wish to consult on aspects of his preliminary analysis in advance of a request for guidance or directions, for example to seek comments on:
- the process that the Arbiter has applied in his preliminary analysis;
  - the information and benchmarking data that he has applied;
  - the robustness of the resulting output; and

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<sup>6</sup> See Annex 2 for the relevant sections of the GLA Act

- further work required before guidance or directions could be given.
- 5.6 In addition to the Arbiter-led shadowing described above, the Arbiter also sees some merit in the PPP Parties seeking to shadow run those elements of the Restated Terms that are appropriate (for example shadow running, in the later part of the current Review Period, those elements of the performance regime that are to be amended alongside the current contractual measures).

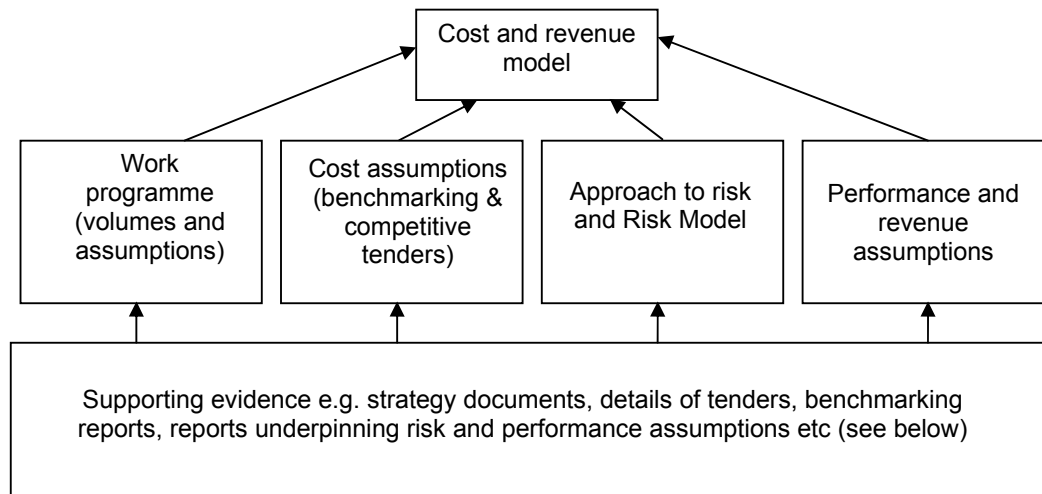
## 6 Information requirements

### General principles

6.1 The Arbitrator anticipates that the substantive information he would require in order to give guidance or direction on a cost-related reference would include:

- a statement of strategy and objectives for the Infraco as a whole, together with a description of how this overall strategy applies both to the various asset groups and to administration costs;
- for each asset group, data which clearly demonstrate consistency with the strategy objectives, and sets out the assumptions for asset management planning and proposed implementation plans, including justification for the approach proposed, volume of work proposed and the basis of cost estimates;
- evidence of the basis for future assumptions in a form which allows trends in performance, delivery and costs to be compared both between Infracos and over time on a consistent basis;
- any comparisons with external benchmarks of cost and performance used by the Infraco;
- details of significant competitive tenders; and
- detail of risk processes and resulting risk provisions that are incorporated into costs.

6.2 The Arbitrator anticipates a substantive Submission will be structured broadly as depicted below:



### Minimum Information Requirement

6.3 The Arbitrator considers that it is important that a Minimum Information Requirement, which is common to London Underground, Tube Lines and the Arbitrator, is established to support the Periodic Review process.

- 6.4 The Arbiter has therefore commissioned the Reporters appointed by him to review the most recent Annual Asset Management Plans (AAMPs) to assess their suitability as a basis for an Infraco's Response to Restated Terms and as a basis for any reference to the Arbiter. He is discussing with Tube Lines and London Underground what changes to the current Data Breakdown Structure format would best meet the needs of all Parties.
- 6.5 The suggested form of the Minimum Information Requirement to support the Response to Restated Terms is:
- detailed cost (including risk amounts), volume and performance data (either in the form of Tube Lines' AAMP or Tube Lines' Response to Restated Terms in a format consistent with the agreed Data Breakdown Structure (DBS)); and
  - supporting information on how Tube Lines proposes to deliver its cost, volume and performance projections which includes transparent assumptions in relation to work programmes, procurement arrangements, access/closures, risk and efficiency amounts (either in the form of the supporting AAMP and AGS documentation or the descriptive element of Tube Lines' Response to Restated Terms).
- 6.6 It is important that London Underground, Tube Lines and the Arbiter have confidence in the robustness of the content of the Minimum Information Requirement. To provide the Arbiter with this confidence, he will expect to commission a further review of the submission from the Reporters.
- 6.7 It is likely to be necessary for the Minimum Information Requirement to be updated in the period between its initial provision and the completion of the Periodic Review. The frequency of these updates should not, however, be pre-determined; updates should be aligned with the emergence of new or refreshed information.

#### **London Underground and Tube Lines' Submissions**

- 6.8 In the event that a matter is referred to the Arbiter for guidance or direction, the Arbiter anticipates that the Referring Party will at the time of referring the matter set out its key arguments to the Arbiter. It is proposed that this statement of key arguments, together with the content of the Minimum Information Requirement, form the Minimum Submission Requirement, as referenced in the Arbiter's Procedural Framework.
- 6.9 Once a matter has been referred, as described in the Procedural Framework, it is proposed that London Underground and Tube Lines work up more complete, well reasoned arguments for their respective positions.
- 6.10 The Arbiter would expect these argument to be made with reference to the well understood, commonly agreed and reliable content of the Minimum Information Requirement. Tube Lines may choose also to provide its more detailed financial model in order to better support its arguments. It is proposed that the submissions which reflect these more

complete arguments form the Detailed Submission Requirements as referenced in the Arbitrator's Procedural Framework document.

## **Annex 1**

### **Relevant extracts from the Tube Lines PPP Agreement**

#### **Para 1.2: Form and structure of review**

This paragraph refers to the form and structure of the way in which (or any aspect of the way in which) the parties should proceed concerning a Periodic Review or an Extraordinary Review to give effect to and facilitate the intent of Part 2 or Part 3 of Schedule 1.9 including (without limitation):

- (a) information to be exchanged between the parties including provision for LUL to revise its Affordability Constraints;
- (b) following any direction as to financing impossibility pursuant to paragraph 1.4 (a) below;
- (c) in relation to obtaining a current credit rating for Infraco as contemplated by paragraph 6.3, the procedure for a joint application by the parties for a credit rating and information to be supplied to credit rating agencies;
- (d) procedures in relation to any election that LUL may make pursuant to paragraph 4.2(b) below;
- (e) procedures for iterations that enable the LUL Options to be utilised in refining the balance between Restated Terms, Affordability Constraints and financing constraints in a manner that makes provision for LUL to propose and Infraco to respond by service of notices equivalent to those required pursuant to paragraphs 2 and 3 in respect of the Restated Terms and Affordability Constraints as originally proposed;
- (f) in relation to any aspect of the appointment or role of the financial advisor referred to in paragraphs 6, 9 and 11 below;
- (g) the dates that are to be the End Date and the Last Financing Date;
- (h) any contention that it would be advantageous for:
  - (i) the Review Process to continue beyond the Review Date; and/or
  - (ii) to revise the End Date; and/or
  - (iii) to revise the Last Financing Date (subject to the limits in the definition of that term);
- (i) following any direction confirming that there has been a material adverse change and/or temporary market disruption which has prevented Infraco procuring the Required Finance prior to the Last Financing Date;

- (j) in relation to an Extraordinary Review, the timetable to which the parties should provide one another with the notices that are equivalent (mutatis mutandis) to those that are required pursuant to paragraphs 2 and 3 below; and
- (k) procedures to take account (for the purposes of giving or amending any direction pursuant to paragraph 1.5 below) of any information received by Infraco in relation to the price and/or terms on which Infraco is able to procure the provision of Rolling Stock on the Northern Line in LUL NL Circumstances (as such term is defined in paragraph 21 of Part 3 of this Schedule 1.9).

**Para 1.3: Base finance, risk and eligible finance**

This paragraph refers to any contention by Infraco that:-

- (a) Base Finance is required at a Periodic Review; and/or
- (b) new or varied obligations contained in the Restated Terms proposed by LUL at a Periodic Review or at an Extraordinary Review (which for the avoidance of doubt shall include the variation of any of the limits and cover (including deductibles) of insurance in accordance with paragraph 4 of Schedule 5.19 (Insurance) of the Contract and/or clause 10.1 of the Insurance Agreement) or the Affordability Constraints:
  - (i) involve an increase in risk (including but not limited to an increase in technical risk in meeting the Restated Terms (and regardless of any costs or contingencies in respect thereof taken into account pursuant to paragraph 7) and including also an increase in risk of non-payment by LUL resulting from a change in the payment profile that LUL may specify as part of the Restated Terms) for Infraco that is material in the context of Infraco's overall activities pursuant to the Contract or in the context of the risk of failure to pay ISC; and/or
  - (ii) are such that a Notional Infraco would require Eligible Finance for performance of the Restated Terms from the Review Date.

**Para 1.4A: Required Finance**

This paragraph refers to any contention as to:

- (a) the amount or any other characteristics of Required Finance; and
- (b) the amount of any finance required for standby or liquidity facilities or for the purposes of financing Net Adverse Effects less than the Materiality Threshold as it would be prudent for a Notional Infraco to have.

## Para 1.5: ISC requirements

This paragraph refers to:

- (a) the best estimate (that is, the most likely outcome) of amounts and times of payment and receipt of each of the cashflows:
  - (i) as referred to in paragraph 7 below; or
  - (ii) as subsequently adjusted pursuant to the exercise of an LUL Option referred to in paragraph 9 below,on the basis (in relation to paragraph 7.2(b)) that the aggregate of all the amounts allowed in respect of the operating and capital costs of a Notional Infraco after the Review Date shall be the best estimate of such amounts as would be agreed to by a Notional Infraco when entering into a contract after a competitive tendering process in respect of the relevant activities having regard to:
  - (x) the risks associated with individual activities (including the risk of cost overruns and ISC Adjustments);
  - (y) the risk that a Notional Infraco may have to undertake activities which it has not expected to have to carry out; and
  - (z) the probability that in the management of a portfolio of activities, the actual cost of some individual activities will exceed the costs allowed, and the actual costs of other individual activities will be less than the costs allowed;
- (b) the ISC to be paid by LUL from the next Review Date on the basis set out in paragraph 7.4 below and such that the negative cashflows (as directed pursuant to paragraph (a) above) are funded by the positive cashflows (as directed pursuant to paragraph (a) above) without the need to draw on other finance. Such ISC to be stated:
  - (i) in semi-annual periods in the form set out in Appendix 1 (Underlying ISC and Aggregated Usage Projections) of Schedule 4.1 of the PPP Contract;
  - (ii) in such amounts as to take into account that indexation will be applied to those amounts in accordance with Schedule 4.2; and
  - (iii) separately identifying in respect of each such semi-annual period the aggregate Fixed Amounts for that period used by the Arbiter in the cashflows referred to in paragraph 7 as adjusted to take into account that indexation will be applied to those amounts in accordance with Schedule 4.2;
- (c) a statement of the amounts allowed by way of fixed amounts and the timing of their payment in respect of any Base Finance, and/or Eligible Finance as the Statutory Arbiter may have directed in the current

Review is required pursuant to this paragraph and paragraph 7 below, in the form of a revised version of Annex 3 of this Schedule 1.9 (Fixed Amounts) as new terms of the Contract pursuant to section 229(4) of the GLA Act;

- (d) a statement of the value of RPIX applicable to the relevant Contract Year which has been used to state the ISC in accordance with paragraph 1.5(b).

**Para 1.8: Interim ISC**

This paragraph refers to an interim level of ISC that would be sufficient to enable a Notional Infraco to perform its existing obligations:

- (a) in relation to a Periodic Review, pending the Restated Terms taking effect pursuant to paragraph 5.5 below where this has not occurred prior to the Review Date; and
- (b) in relation to an Extraordinary Review, pending any direction pursuant to paragraph 1.9(b) below.

## **Annex 2**

### **Relevant extracts from GLA Act**

#### **s232 [Further powers]**

- (1) For the purposes of the proper discharge of the functions conferred or imposed on him by or under this Act, the PPP arbiter may—
  - (a) carry out inspections of such of the railway infrastructure or equipment belonging to, or under the control of, any party to a PPP agreement as he considers appropriate;
  - (b) consult such bodies or persons as he considers appropriate in relation to any direction or guidance given or proposed to be given by him;
  - (c) do all such things as he considers appropriate for or in connection with the giving of a direction under section 229(3) above or guidance under section 230(2) above; and
  - (d) do such other things as he considers necessary or expedient.
- (2) The powers conferred on the PPP arbiter by this section and section 233 below are exercisable for purposes preparatory or ancillary to the giving of directions or guidance under this Chapter generally and notwithstanding that there is no matter in relation to which a direction under section 229(3) above, or guidance under section 230(2) above, is required.
- (3) In this section “railway infrastructure” has the same meaning as in section 231 above.

#### **s233 [Provision of information to the PPP arbiter]**

- (1) Any person falling within subsection (2) below shall, at the request of the PPP arbiter, provide him with such information as the PPP arbiter considers relevant to the proper discharge of the functions conferred or imposed on him by or under this Act and as may be specified or described in the request.
- (2) The persons who fall within this subsection are—
  - (a) any party to a PPP agreement;
  - (b) any associate of a party to a PPP agreement; and
  - (c) any PPP related third party.
- (3) The information shall be provided in such form and manner, and within and within such time, as may be specified in the request.